

BEFORE THE BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT AND
and transfer of ARM 8.50.423,)	TRANSFER, ADOPTION,
8.50.424, 8.50.427 through)	REPEAL AND TRANSFER
8.50.433, and 8.50.438 and)	
the repeal of ARM 8.50.425,)	
8.50.437, and 8.50.501 through)	
8.50.506, pertaining to private)	
security patrol officers and)	
investigators, the adoption of)	
New Rule I, fee schedule and)	
New Rule II, firearms training)	
course curriculum and standards,)	
and the transfer of ARM 8.50.101,)	
8.50.201, 8.50.202, 8.50.426 and)	
8.50.801)	

TO: All Concerned Persons

1. On April 28, 2005, the Board of Private Security Patrol Officers and Investigators published MAR Notice No. 8-50-29 regarding the public hearing on the proposed amendment and transfer, adoption and repeal of the above-stated rules, at page 605 of the 2005 Montana Administrative Register, issue no. 8.

2. On May 19, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana to consider the proposed amendment and transfer, adoption and repeal of the above-stated rules.

3. The Board thoroughly considered all of the comments received. A summary of the comments received and the Board's responses are as follows:

Comment 1: Two commenters suggested that the rules should be organized into sections pertaining specifically to each type of profession regulated by the Board, as this separation would better serve all licensees.

Response 1: The Board notes that the current organization of the Board rules complies with the acceptable format utilized in the Administrative Rules of Montana. The Board declines to alter the organization of the rules at this time.

Comment 2: One commenter opposed the restriction on temporary permit holders in ARM 8.50.424/24.182.507 from having access to firearms in (3)(b) as too broad, unconstitutional and vague in the meaning of "access."

Response 2: Following consideration of the comment, the Board notes that the intent behind the restriction of temporary permit holders' use of firearms is solely to protect the public. The Board is amending the rule to remove the overbroad restriction of "access" to firearms.

Comment 3: A commenter opposed the proposed change in ARM 8.50.429/24.182.505 to allow the Board to waive the written examination requirement, stating that uniform testing is a fundamental base for professional licensing. The commenter asserted that all private investigator applicants should have to take the examination to fully protect the public.

Response 3: The Board considered the comment and notes that the amendment does not remove the written examination requirement for any licensure type. The amendment merely allows the Board to waive the examination requirement upon applicant request and in the specific instances where the Board determines that sufficient experience is present to ensure the adequate protection of the public. The Board is amending the rule to clarify that the waiver may be of a full examination required or any portion of an examination.

Comment 4: One commenter opposed the proposed increase in the minimum level of insurance coverage for private investigators, stating that insurance protects the person paying the insurance premium, not a person filing a claim. The commenter further stated that private investigators do not perform functions akin to law enforcement and private investigators should not be lumped together with security companies in the insurance requirements.

Response 4: The Board is statutorily mandated to adopt and enforce rules requiring licensees to file insurance policies with the Board, pursuant to 37-60-202, MCA. The Board increased the minimum insurance limits following lengthy discussion and suggestions from private investigators and private security companies and receipt of information from the insurance industry. The Board decided on the uniform minimum levels of insurance in an attempt to lessen confusion among licensees and to move toward consistency within the rules.

Comment 5: One commenter supported the insurance requirement specifically for contract security and armored car services and suggested the minimum insurance limit be increased from what the Board has proposed.

Response 5: The Board acknowledges the comment and notes that the limits are a minimum guideline and any policy with greater limits would be in compliance with the rule. The Board has determined to amend the rule as proposed.

Comment 6: One commenter opposed the \$25 fee for armed status licensure proposed in New Rule I. The commenter stated that charging the armed status fee at the time of initial licensure is acceptable, but that at renewal it is neither warranted nor justified and that most of the licensing fees at renewal should be paid by the companies, not their employees.

Response 6: The Board proposed the additional fee for armed status to cover the additional licensure steps for armed licensees both at time of initial licensure and at renewal. The Board also notes that between companies and employees, the individual employee holds and maintains the armed status.

Comment 7: One commenter suggested changing the term "weapon" to "firearm," as used throughout section (2) of New Rule II to accomplish consistent use of the term in the title and the rule. The commenter also pointed out that "weapon" has a much broader meaning than "firearm."

Response 7: The Board acknowledges the comment and agrees that the term should be "firearm" as used throughout section (2). The Board is amending the rule accordingly.

Comment 8: One commenter suggested changing the phrase "finger on trigger" in subsection (2)(b)(iv) of New Rule II to "finger off trigger," to coincide with the purpose to train firearms handlers to keep their finger off the trigger until a decision to shoot is made.

Response 8: The Board acknowledges the comment and notes that the purpose of the required curriculum for firearms training courses is to teach firearm safety. The Board determined there is no need to change the rule in order to comply with current industry courses or instructors. The Board is adopting the rule as proposed.

Comment 9: One commenter suggested that New Rule II should require firearm safety training in both administrative firearm handling and tactical handling. The commenter also suggested a need for sections on shoot/no-shoot decision-making and tactical shooting.

Response 9: It is not the Board's intention to dictate the specific portions of the required firearms courses, but to provide basic guidelines as to minimum course requirements. The Board reserves the choice of specific components of the courses to the qualified and certified firearms instructors. The Board is adopting the rule as proposed.

4. After consideration of the comments, the Board has amended and transferred ARM 8.50.423 (24.182.301), 8.50.427 (24.182.501), 8.50.428 (24.182.503), 8.50.430 (24.182.403), 8.50.431 (24.182.405), 8.50.432 (24.182.407), 8.50.433 (24.182.513), and 8.50.438 (24.182.511) exactly as proposed.

Additionally, after consideration of the comments, the Board has adopted NEW RULE I (24.182.401) and repealed ARM 8.50.425, 8.50.437, 8.50.501, 8.50.502, 8.50.503, 8.50.504, 8.50.505, and 8.50.506 exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.50.424 (24.182.507), 8.50.429 (24.182.505), and adopted NEW RULE II (24.182.801) with the following changes, stricken matter interlined, new matter underlined:

8.50.424 (24.182.507) TEMPORARY PERMIT (1) and (2) remain as proposed.

(3) In performance of duties, temporary permit holders shall not:

- (a) wear, carry, or possess firearms; or
- (b) ~~have access to firearms; or~~
- ~~(c)~~ have unsupervised access to valuables.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-302, 37-60-309, 37-60-310, 37-60-312, 37-60-407, MCA

8.50.429 (24.182.505) WRITTEN EXAMINATION (1) through (7) remain as proposed.

(8) Waiver of the examination requirement, or any portion thereof, may be granted at the board's discretion, following an applicant's submission of a written request for such waiver.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-303, MCA

NEW RULE II (24.182.801) CURRICULUM AND STANDARDS FOR FIREARMS TRAINING COURSES (1) remains as proposed.

(2) Firearms training courses must address the following issues:

- (a) ~~weapon~~ firearm familiarization, including:
 - (i) safety levers;
 - (ii) decocking levers;
 - (iii) magazine release;
 - (iv) slide-lock release; and
 - (v) reloading;
 - (b) safe handling of the ~~weapon~~ firearm, emphasizing:
 - (i) negligent discharge;
 - (ii) muzzle direction;
 - (iii) dropping a ~~weapon~~ firearm;
 - (iv) finger on trigger;
 - (v) proper grip;
 - (vi) sight picture;
 - (vii) proper holstering;
 - (viii) ~~weapon~~ firearm retention;
- (2)(b)(ix) through (3) remain as proposed.

AUTH: 37-60-202, MCA

IMP: 37-60-202, 37-60-303, MCA

6. The Board has transferred ARM 8.50.101, 8.50.201, 8.50.202, 8.50.426 and 8.50.801 as follows:

<u>OLD</u>	<u>NEW</u>
8.50.101	24.182.101
8.50.201	24.182.201
8.50.202	24.182.202
8.50.426	24.182.413
8.50.801	24.182.2301

7. In the proposal Notice the new chapter number was inadvertently listed as Chapter 186. The Department has determined that in order to keep the boards and programs in alphabetical order the chapter for Private Security Patrol Officers and Investigators should be numbered 182.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
RAY MURRAY, PhD, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State September 26, 2005.